

REMARKS-General

The applicant choose species A (triangle locker slot, Figs. 2, 3, 4, 5A, 5B and 7) as the elected single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is final held to be allowable. Applicant elect without traverse to prosecute the invention of original claims 1-14 for examination since those elected claims read on the above elected embodiment. The claims 15-26 are withdrawn in this application.

The newly drafted independent claim 27 incorporates all structural limitations of the original claim 1 and includes further limitations previously brought forth in the disclosure. No new matter has been included. All new claims 27-46 are submitted to be of sufficient clarity and detail to enable a person of average skill in the art to make and use the instant invention, so as to be pursuant to 35 USC 112.

Regarding to Rejection of Claims 1-4, 9, 11 and 13 under 35USC102

Pursuant to 35 U.S.C. 102, "a person shall be entitled to a patent unless:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

In view of 35 U.S.C. 102(b), it is apparent that a person shall not be entitled to a patent when his or her invention was patent in this country more than one year prior to the date of the application for patent in the United States.

However, the Delahunty patent and the instant invention are not the same invention according to the fact that the independent claims 1 and 9 of the Delahunty patent do not read upon the instant invention and the independent claim 27 of the instant invention does not read upon the Delahunty patent too. Apparently, the instant invention, which discloses a method for guiding a growing plant via a supporter, should not be the same invention as the Delahunty patent which discloses a fixing device.

The instant invention provides a triangular locker slot to detachably engage with the locking teeth wherein the locker slot has a predetermined dimension to fit the size of the guiding member such that Delahunty fails to anticipate the distinctive features of:

(i) twisting the tail portion of the guiding member to substantially align with an adjacent edge of a locker slot, having a triangular shape, formed at the head portion of the guiding member, wherein the adjacent edge of the locker slot is substantially larger than a width of the guiding member, wherein the locker slot has a width gradually increasing towards the head end of the guiding member (as claimed in claim 27);

(ii) slidably inserting the tail portion of the guiding member through the locker slot to form a binding loop around the growing plant with the supporter, wherein the tail portion of the guiding member is slid along the adjacent edge of the locker slot to adjust a loop diameter of the binding loop corresponding to a distance between the growing plant and the supporter (as claimed in claim 27); and

(iii) twisting the tail portion of the guiding member back to its original orientation such that a holding neck portion of the corresponding locking tooth is locked at the locker slot by a transverse width thereof so as to retain the loop diameter of the binding loop to fittingly bind the growing plant with the supporter (as claimed in claim 27);

(iv) wherein the transverse width of the locker slot is larger than a thickness of the guiding member and is larger than a width of the holding neck portion of each of the locking teeth (as claimed in claim 27);

(v) when the growing plant grows to increase a diameter thereof to a grown diameter, releasing the guiding member from the growing plant by twisting the tail portion of the guiding member to align with the adjacent edge of the locker slot to unlock the respective locking tooth with the locker slot such that the tail portion of the guiding member is allowed to slidably eject from the locker slot (as claimed in claim 28);

(vi) twisting the tail portion of the guiding member back to its original orientation such that the locking neck portion of the adjacent locking tooth is locked at the locker slot so as to retain the loop diameter of the binding loop to fittingly re-bind the

guiding member around the growing plant with the supporter (as claimed in claim 28);
and

(vii) wherein a height of the locker slot at least equals to the width of the guiding member (as claimed in claims 29-30).

Accordingly, Delahunty merely anticipates, in column 6, lines 13-19, a wall fixing 10 has two ties 35, 36, wherein one of the ties 35 has an enlarged aperture 38 with a neck portion 39 and another tie 36 has barbed projections 40 extending from its edge along its length such that tie 36 may be passed through aperture 38 in tie 35 to fasten the two ties together. The only mention in Delahunty is the aperture 38 with a neck portion 39 in the specification and the figure 3 without any further disclosure of any shape of the aperture. Therefore, Delahunty fails to anticipate the locker slot having a triangular shape has a **adjacent edge** substantially larger than the width of the guiding member and a **transverse width** which is larger than a thickness of the binding member and is larger than a width of the holding neck portion of each of the locking teeth as in claim 27 of the instant invention. In other words, Delahunty fails to teach and anticipate the tail portion of the guiding member is twisted to align the adjacent edge of the locker slot in order to slidably insert the tail portion of the guiding member into the locker slot.

In addition, Delahunty fails to anticipate the elements of the method claim 27 of the instant invention including the steps of (a) providing a guiding member ...; (b) twisting...; (c) slidably inserting ...; and (d) twisting.... Delahunty merely suggests a wall fixing for use as a plant tie in plastics material without teaching any detail method of how to do it. Furthermore, Delahunty also fails to anticipate the elements of the method claim 28 of the instant invention including the steps of (e) when the growing plant grows...; (f) slidably releasing...; and (g) twisting..., in which Delahunty fails to teach how to re-bind the plant by the same guiding member when the growing plant grows.

The applicant respectfully submits that Delahunty fails neither suggest nor anticipate the above distinctive features (i) to (vii) as claimed in the claims 27-30 of the instant invention.

Response to Rejection of Claims 5-8, 10, 12 and 14 under 35USC103

The Examiner rejected claims 5-8, 10, 12 and 14 over Delahunty in view of German Patent DE 4007784 A1 to Basener et al. Pursuant to 35 U.S.C. 103:

“(a) A patent may not be obtained though the invention is **not identically** disclosed or described as set forth in **section 102 of this title**, if the **differences** between the subject matter sought to be patented and the prior art are such that the **subject matter as a whole would have been obvious** at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.”

In view of 35 U.S.C. 103(a), it is apparent that to be qualified as a prior art under 35USC103(a), the prior art must be cited under 35USC102(a)~(g) but the disclosure of the prior art and the invention are not identical and there are one or more differences between the subject matter sought to be patented and the prior art. In addition, such differences between the subject matter sought to be patented **as a whole** and the prior art are obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

In other words, the differences between the subject matter sought to be patent as a whole of the instant invention and Delahunty which is qualified as prior art of the instant invention under 35USC102(b) are obvious in view of Basener at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

However, as recited above, Delahunty merely anticipates a wall fixing 10 has two ties 35, 36, wherein one of the ties 35 has an enlarged aperture 38 with a neck portion 39 and another tie 36 has barbed projections 40 extending from its edge along its length such that tie 36 may be passed through aperture 38 in tie 35 to fasten the two ties together. On the other hand, Basener merely teaches a fastener with a number of successive links in a row wherein each of the links has a triangular hole such that the fastener passes through one of the holes to form a loop.

The Examiner appears to reason that since Delahunty teaches that the wall fixing has barbed projections and aperture, it would have been obvious to one skilled in

the art to modify the aperture with the triangular hole of Basener. However, the differences between Delahunty, Basener and the instant invention as claimed in claims 27 to 46 are not limited to the disclosure of "the tie with barbed projections and aperture", but includes the above distinctive features (i) to (vii). In addition, regarding to claims 31 to 46, the instant invention further contains the following distinctive features:

(viii) a plurality of elongated slit are spacedly and inclinedly cut along two longitudinal edges of the tail portion of the binding member respectively to form the locking teeth and to define the holding neck portion on the binding member at a root portion of each of the locking teeth (as claimed in claims 31-34);

(ix) a guiding edge of each of the locking teeth having an outer end formed at the longitudinal edge of the tail portion of the guiding member and an inner end inclinedly and inwardly extended on the guiding member towards the tail end thereof to define the holding neck portion on the guiding member at the inner end of the guiding edge of each of the locking teeth (as claimed in claims 35-38);

(x) wherein the guiding edge of each of the locking teeth is extended inclinedly at a direction corresponding to an inserting direction of the tail portion of the guiding member such that the locking teeth are allowed to slide through the locker slot at the inserting direction while the locking teeth are blocked up at the transverse width at an ejecting direction which is opposed to the inserting direction (as claimed in claims 39-42); and

(xi) the tail end of the guiding member having a tapered shape having a width substantially smaller than the transverse width of the locker slot such that the tapered tail portion of the guiding member is guided to slide through the locker slot when the tail end of the guiding member is inserted therethrough (as claimed in claims 43-46).

The applicant respectfully submits that the invention must be considered as a whole and there must be something in the reference that suggests the combination or the modification. See Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick, 221 U.S.P.Q. 481, 488 (Fed. Cir. 1984) ("The claimed invention must be considered as a whole, and the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination"), In re Gordon, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984), ("The mere fact that the prior art

could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.”) *In re Laskowski*, 10 U.S.P.Q.2d 1397, 1398 (Fed. Cir. 1989), (“Although the Commissioner suggests that [the structure in the primary prior art reference] could readily be modified to form the [claimed] structure, “[t]he mere fact that the prior art could be modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.”)

In the present case, there is no such suggestion. Delahunty and Basener perform very different types of binding method. In any case, even combining Delahunty and Basener would not provide the invention as claimed -- a clear indicia of nonobviousness. *Ex parte Schwartz*, slip op. p.5 (BPA&I Appeal No. 92-2629 October 28, 1992), (“Even if we were to agree with the examiner that it would have been obvious to combine the reference teachings in the manner proposed, the resulting package still would not comprise zipper closure material that terminates short of the end of the one edge of the product containing area, as now claimed.”). That is, modifying Delahunty with Basener, as proposed by the Examiner, would not provide a binding method having the above distinctive features (i) to (xi).

Applicant believes that neither Delahunty nor Basener, separately or in combination, suggest or make any mention of the above distinctive features (i) to (xi) as claimed in the instant invention

Applicant believes that for all of the foregoing reasons, all of the claims are in condition for allowance and such action is respectfully requested.

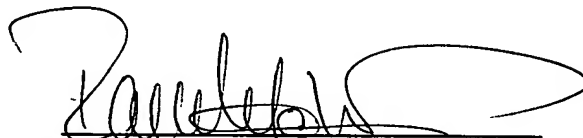
The Cited but Non-Applied References

The cited but not relied upon references have been studied and are greatly appreciated, but are deemed to be less relevant than the relied upon references.

In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the objection are requested. Allowance of claims 27-46 at an early date is solicited.

Should the Examiner believe that anything further is needed in order to place the application in condition for allowance, he is requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

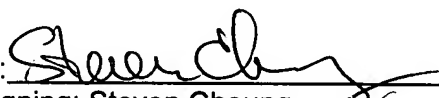


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